

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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PRESCOTT H. RATHBORNE,

Plaintiff,

v.

BRENDA JONES, *et al.*,

Defendants.

Case No. 3:21-cv-00382-MMD-WGC

ORDER

I. SUMMARY

Pro se Plaintiff Prescott H. Rathborne brings this action under 42 U.S.C. § 1983. (ECF No. 27.) Before the Court is a Report and Recommendation (“R&R”) of United States Magistrate William G. Cobb (ECF No. 3), recommending the Court grant Rathborne’s application to proceed *in forma pauperis* (ECF No. 1), file the complaint (ECF No. 1-1), and dismiss the case with prejudice. Rathborne filed a letter to the Court, which the Court construes as an objection to the R&R. (ECF No. 4 (“Objection”).) Because the Court agrees with Judge Cobb’s screening analysis of Rathborne’s complaint, the Court will adopt the R&R in its entirety.

II. BACKGROUND

Rathborne asserts claims against Christopher Nepper (the Mineral County Clerk/Treasurer), Randy Adams (Mineral County Sheriff), Shaun Rowe (Mineral County District Attorney), Brenda Jones (“Chief Deputy”), and Mineral County. (ECF No. 1-1 at 2.) Rathborne alleges that property he owns in Mineral County is subject to a certified land patent. (*Id.* at 4.) Rathborne further alleges that Defendants are attempting to auction off his land, despite the land patent. (*Id.*) He seeks damages for the time and expense it has taken to prevent his land from being unlawfully sold. (*Id.*) Rathborne claims the Court has jurisdiction over this matter because the land patents were issued pursuant to the Treaty

1 of Guadalupe Hidalgo. (*Id.* at 3.)

2 **III. LEGAL STANDARD**

3 This Court “may accept, reject, or modify, in whole or in part, the findings or
4 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party
5 timely objects to a magistrate judge’s report and recommendation, then the Court is
6 required to “make a de novo determination of those portions of the [report and
7 recommendation] to which objection is made.” *Id.*

8 **IV. DISCUSSION**

9 As a preliminary matter the Court agrees with Judge Cobb’s determination that
10 Rathborne has shown he cannot pay the filing fee. Rathborne’s application to proceed *in*
11 *forma pauperis* is therefore granted. The Court now turns to whether the complaint states
12 a claim upon which relief may be granted.

13 Judge Cobb concluded that the Court lacks jurisdiction over the claims in
14 Rathborne’s complaint. (ECF No. 3 at 3.) Despite the allegation that Rathborne’s land is
15 subject to a land patent, Judge Cobb reasoned that Rathborne does not state any federal
16 law that has been violated. (*Id.*) Because the Ninth Circuit has squarely held that land
17 patents do not provide a basis for federal question jurisdiction, Judge Cobb recommends
18 the case be dismissed with prejudice. See *Virgin v. Cnty. of San Louis Obispo*, 201 F.3d
19 1141 (9th Cir. 2000).

20 Nothing in Rathborne’s Objection clarifies which rights he believes Defendants
21 violated or which federal laws are in question. Instead, Rathborne levels personal attacks
22 at Judge Cobb and opines on various unrelated matters. Despite the fact that Rathborne
23 titles this document an objection, no objections to Judge Cobb’s reasoning were
24 articulated. Instead, Rathborne notes that “the urgency needed months ago to thwart
25 Mineral County’s theft have long since past.”¹ (ECF No. 4 at 1.) Even applying de novo
26

27 ¹Rathborne did not file any request for emergency relief. Screening complaints
28 pursuant to 28 U.S.C. § 1915 can take several months. If Rathborne required expedited
relief, he needed to alert the Court that his case was time sensitive.

1 review, despite that Rathborne did not raise any objection to Judge Cobb's R&R, the Court
2 is satisfied that Judge Cobb's conclusions are correct and the case should be dismissed
3 with prejudice.

4 **V. CONCLUSION**

5 The Court notes that the parties made several arguments and cited to several cases
6 not discussed above. The Court has reviewed these arguments and cases and determines
7 that they do not warrant discussion as they do not affect the outcome of the issues before
8 the Court.

9 It is therefore ordered that Rathborne's objection (ECF No. 4) to the Report and
10 Recommendation of U.S. Magistrate Judge William G. Cobb is overruled. The Report and
11 Recommendation of U.S. Magistrate Judge William G. Cobb (ECF No. 3) is adopted in its
12 entirety.

13 It is further ordered that Rathborne's application to proceed *in forma pauperis* (ECF
14 No. 1) is granted.

15 The Clerk of Court is directed to file the complaint (ECF No. 1-1).

16 It is further ordered that the complaint is dismissed with prejudice and without leave
17 to amend.

18 The Clerk of Court is further directed to enter judgment accordingly and close this
19 case.

20 DATED THIS 20th Day of January 2022.

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23 MIRANDA M. DU
24 CHIEF UNITED STATES DISTRICT JUDGE
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